

**ORDINANCE NO. 2017 - 020**

**AN ORDINANCE REPEALING AND REPLACING CHAPTER 99 OF THE CITY OF CASTROVILLE CODE OF ORDINANCES PROVIDING FOR THE PRESERVATION OF CERTAIN TREES WITHIN THE CITY OF CASTROVILLE, TEXAS, AND WITHIN THE EXTRA-TERRITORIAL JURISDICTION (ETJ) OF THE CITY; PROVIDING FOR DEFINITIONS, EXCEPTIONS, REGULATION, AND ENFORCEMENT; REQUIRING PERMITS; PROVIDING A MEANS OF VARIANCE HERETO; PROVIDING A REPEALING SECTION; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING FOR PENALTIES FOR VIOLATION**

**WHEREAS**, the City Council seeks to preserve the neighborhood character of Castroville, improve the quality of living for Castroville's citizens, preserve and enhance the rural atmosphere of the Castroville community, responsibly protect the natural environmental resources of the area, preserve the beauty of the farmlands and natural environment that defines the character of Castroville and makes it a unique and desirable community; and

**WHEREAS**, Texas Local Government Code Chapter 212 authorizing the City to extend certain regulations within its extraterritorial jurisdiction related to the subdivision of land and development to protect the public's health, safety and general welfare: and

**WHEREAS**, the City Council seeks to maintain the value of City's scenic beauty and rural charm, which are the keystones of the City's quality of life; and

**WHEREAS**, the City Council of the City of Castroville, Texas, deems that tree preservation is in the interest of public health, safety, morale, general welfare.

**NOW THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CASTROVILLE, TEXAS:**

**Part 1. Chapter 99 "Tree Preservation" of the City of Castroville Code of Ordinances is hereby repealed in its entirety and replaced with a new Chapter 99 "Tree Preservation" as set forth in Exhibit A.**

**Part 2. Cumulative and Conflicts.** This Ordinance shall be cumulative of all provisions of ordinances of the City of Castroville, Texas, except where the provisions of the Ordinance are in direct conflict with the provisions of such ordinances, in which event the conflicting provisions of such ordinances are hereby repealed. Any and all previous versions of this Ordinance to the extent that they are in conflict herewith are repealed.

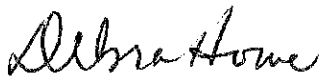
**Part 3. Severability.** It is hereby declared to be the intention of the City Council that the phrases, clauses, sentences, paragraphs, and sections of this Ordinance are severable, and if any phrase, clause sentence, paragraph or section of this Ordinance shall be declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this Ordinance, since the same would have been enacted by the City Council without the incorporation in this Ordinance of any such unconstitutional phrase, clause, sentence, paragraph or section.

**Part 4. Effective Date.** This Ordinance shall become effective immediately upon its passage, approval and publication as provided by law.

**PASSED AND APPROVED THIS 9<sup>th</sup> DAY OF MAY, 2017.**

  
\_\_\_\_\_  
JEFFREY GARDNER, MAYOR

**ATTEST:**

  
\_\_\_\_\_

Debra Howe, City Secretary  
City of Castroville

CHAPTER 99

**TREE PRESERVATION REQUIREMENTS**

**Article I. General Provisions**

- Sec. 99-1. Authority, Purpose, Scope and Applicability.
- Sec. 99-2. Administration.
- Sec. 99-3. Exemptions.
- Sec. 99-4. Definitions.
- Secs. 99-05-99-10. Reserved.

**Article II. Protected Trees.**

- Sec. 99-11. Protected Species.
- Sec. 99-12. Categories of Protected Trees.
- Sec. 99-13. Preservation Rate.
- Sec. 99-14. Legacy Trees.
- Secs. 99-15-99-20. Reserved.

**Article III. Procedures**

- Sec. 99-21. Tree Removal Permit.
- Sec. 99-22. Tree Preservation Plan.
- Sec. 99-23. Tree Survey.
- Sec. 99-24. Tree Removal Chart.
- Sec. 99-25. Tree Survey and Tree Removal Chart Expiration.
- Sec. 99-26. Protected Tree Mitigation Plan.
- Sec. 99-27. Tree Removal Permit Issuance.
- Sec. 99-28. Protection During Construction.
- Sec. 99-29. Prohibited Activities During Construction.
- Sec. 99-30. Reserved.

**Article IV. Legacy Tree Removal**

- Sec. 99-31 Legacy Tree Removal Process.
- Secs. 99-42-99-40. Reserved.

**Article V. Tree Pruning Restrictions**

- Sec. 99-41 Tree Pruning Restrictions.
- Secs. 99-42-99-50. Reserved.

## Article VI. Variances

Sec. 99-51 Variances.

Secs. 99-52-99-60. Reserved.

## Article VII. Penalties

Sec. 99-61. Enforcement.

Sec. 99-62. Violations of Tree Preservation Standards.

Secs. 99-63-99-70. Reserved.

## Article I. General Provisions

### Sec. 99-1. – Authority, Purpose, Scope and Applicability.

- (a) **Authority.** This ordinance is adopted by the City of Castroville's City Council pursuant to the authority of the statutes and constitution of the State of Texas, including, but not limited to, Texas Local Government Code Chapter 51 (entitled "*General Powers of a Municipality*") and Texas Local Government Code Chapter 212 (entitled "*Municipal Regulation of Subdivisions and Property Development*").
- (b) **Common name.** This ordinance shall commonly be known as the City of Castroville's "*Tree Preservation Ordinance*" and may be referred herein as such or as "this chapter."
- (c) **Purpose.** The purpose of this Tree Preservation Ordinance is to set the standards for the preservation and protection of a diminishing natural resource, our native and other adapted existing site trees, and to encourage the planting of trees to replace and supplement our urban forest during the development, construction, and redevelopment processes. In that regard the City Council finds this Tree Preservation Ordinance promotes the health, safety, morals or general welfare of the community; and promotes the City's objectives to:
  - (1) preserve trees as an important public resource enhancing the quality of life and the general welfare of the city and enhancing its unique character and physical, historical and aesthetic environment;
  - (2) encourage the preservation of trees for the enjoyment of future generations;
  - (3) encourage the preservation of trees to provide health benefits by the cleansing and cooling of the air and contributing to psychological wellness;
  - (4) encourage the preservation of trees to provide environmental elements by adding value to property, and reduction of energy costs through passive solar design utilizing trees;
  - (5) encourage the preservation of trees to provide environmental elements necessary to reduce the amount of pollutants entering streams and to provide elements crucial to establishment of the local ecosystem;

- (6) provide tree preservation requirements and incentives to exceed those requirements that encourage the maximum preservation of trees; and
  - (7) promote and protect the health, safety and welfare of the public by creating an urban environment that is aesthetically pleasing and that promotes economic development through an enhanced quality of life.
- (d) **Scope.** The scope of this Tree Preservation Ordinance applies to the City's corporate limits and, pursuant to the authority of Texas Local Government Code Section 212.003 (entitled "*Extension of Rules to the Extraterritorial Jurisdiction*"), its extraterritorial jurisdiction.
- (e) **Applicability.**
- (1) Except for exemptions in Section 99-3, this chapter applies to and regulates all activities that may result in the damaging, destruction, death or removal of a Protected Tree on a lot or parcel, described as follows:
    - (A) New construction and additions that require a building permit;
    - (B) Construction of new parking lots or expansion of existing parking lots;
    - (C) Subdivision of land including plats, replats, and planned developments;
    - (D) Any grading, filling or clearing of land;
    - (E) Chemical or biological treatment of trees; or
    - (F) Trenching or excavation.
  - (2) Tree pruning restrictions in this chapter shall apply to all property on private or public land.

**Sec. 99-2. Administration.** Administration and enforcement of this chapter shall be the responsibility of the City Arborist, under the supervision of the City Administrator.

- (a) The City Arborist shall be charged with the responsibility and authority to approve Tree Surveys, Tree Protection Plans, and Tree Preservation Plans as same are required by this chapter; and shall be authorized to make site inspections to verify compliance with this chapter.
- (b) The City Administrator shall cause notice of violation to be issued to persons, firms, and corporations failing to comply with provisions of the tree preservation ordinance which will be adjudicated through the municipal court system or as directed by City Council may institute an action in the district court to enjoin the violation of the ordinance concerning properties within the extraterritorial jurisdiction.
- (c) The City Administrator, building official, or an authorized representative of the City shall have the authority to place a stop work order on any activity which is effectively removing protected trees or is in violation of this chapter.

**Sec. 99-3. Exemptions.**

- (a) Vested applications. In accordance with Texas Local Government Code Chapter 245, any project that has received a permit, which may be the first in a series of permits; provided said project has not become dormant, nor has said permit expired.
- (b) The following activities are exempt from the regulations of this chapter pertaining to Significant Trees, Heritage Trees, and Flood Plain Trees. These activities are not exempt from the regulations of this chapter pertaining to Legacy Trees or Tree Pruning Restrictions. Whenever a Significant Tree, Heritage Tree or Flood Plain Tree is removed as authorized for an activity by this subsection, the activity also is exempt from any other obligation imposed by these regulations related to protection of said trees, except provisions pertaining to Tree Pruning Restrictions.
  - (1) Construction activities for any residential or non-residential use on a lot or parcel described as follows:
    - (A) Rehabilitation, renovation or reconstruction of a building or structure within the existing footprint of the building or structure.
    - (B) New construction of buildings or structures where the new construction does not exceed a total floor area of two thousand five hundred (2,500) square feet per lot or parcel.
    - (C) New additions that expand the total floor area of the existing building or structure where the new addition does not exceed a total floor area of two thousand five hundred (2,500) square feet per lot or parcel.
    - (D) Construction of a new parking lot that does not exceed two thousand five hundred (2,500) square feet per lot or parcel.
    - (E) Expansion of an existing parking lot where the expansion does not exceed two thousand five hundred (2,500) square feet per lot or parcel.
    - (F) Rehabilitation, renovation or reconstruction of an existing parking lot that does not expand the total parking lot area.
  - (2) Plant or Tree Nursery. On that portion of property owned or operated by a plant nursery and/or tree nursery, on which plants or trees are planted and/or grown for commercial sale.
  - (3) Public utility and drainage easement and maintenance. Utility service providers, including the city, or their contractors, agents, successors and assigns shall have the right to maintain their facilities, through removal or trimming of protected trees located within lawfully designated easements or rights-of-way, to prevent any part of such trees from becoming a danger to public health, safety and welfare by interfering with utility service. Where possible, trimming shall be done in a manner such that the aesthetics and health of the trees are not destroyed.
  - (4) Public health and safety. A protected tree that is in danger of falling or otherwise poses a hazard to the public health or safety may be removed without delay by the city or the owner of the land on which the tree is located, when approved by the City Arborist or City Administrator.

- (5) State of emergency. Upon declaration of a state of emergency by the Mayor of Castroville, trees that must be summarily removed as a result of a natural event such as hurricane, tornado, storm, flood or other act of God that endangers the public health, welfare or safety and requires immediate removal without delay.
- (6) Public utility construction. Public utility construction and maintenance conducted by or on behalf of the City.
- (7) Public property. Public property owned or used by the federal, state, county, or municipal government or independent school district, including property dedicated as public rights-of-way.
- (8) Cemeteries.
- (9) Agricultural or Wildlife Management. An agricultural or wildlife management use appraised by the Appraisal District for agriculture or wildlife management value where tree removal is necessary for agricultural or wildlife management activities; until said use is no longer appraised as such, the use changes, or the property is being platted, replatted, developed or redeveloped, in any manner.
- (10) Boundary surveying. Clearing of understory necessary to perform boundary surveying of real property or to conduct tree surveys and inventory. Clearing for surveying may not exceed a width of two (2) feet for general survey of an easement boundary and eight (8) feet for survey of property boundary lines. No Protected Tree eight (8) inches DBH or larger may be removed in any manner during such boundary or general surveying.

#### **Sec. 99-4. Definitions.**

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Administrator* means the person authorized to administer this chapter.

*Approved Surveyor* means a person certified or approved by the City Administrator to conduct Tree Surveys as required by this chapter.

*Caliper* means an instrument used in determining the diameter of a tree utilizing a tree caliper instrument.

*City* means the municipality of Castroville, Medina County, Texas.

*City Administrator* means the person appointed by the City Council to serve as City Administrator, or that person's designee.

*City Arborist* means the person appointed by the City Administrator to administer specified aspects of this chapter.

*City Council* means governing body of the City.

*Clear-cutting* means the practice of removing all trees and brush from a parcel, tract, lot or acreage.

*Code* means the Code of Ordinances of the City of Castroville, Texas.

*Critical Root Zone* means a region surrounding a tree measured outward from its trunk; the Critical Root Zone is the essential area of the roots that must be preserved for the tree's livelihood and is measured as one foot of radial distance outward from the trunk for every inch of the tree's diameter at breast height, but in no instance shall a Critical Root Zone be less than eight (8) feet in radius.

*Crown* means all portions of a tree, excluding the trunk and roots.

*DBH or diameter at breast height* means in the case of a Single Trunk Tree, the diameter, in inches, of a tree as measured through the main Trunk at the DBH Measurement Point; or in the case of a Multi-trunk Tree the sum of the largest Trunk and one-half (1/2) of the diameter of each additional Trunk measured at the DBH Measurement Point.

*DBH Measurement Point* means the area of the Trunk, in the case of a Single Trunk Tree, or Trunks, in the case of a Multi-trunk Tree, that is four (4) and one-half (1/2) feet above the natural ground level.

*Development Permit Application* means a permit application triggering the need for a Tree Removal Permit, Development Permit Applications includes applications for those permits listed in this chapter.

*Diameter* means a straight line passing from side to side through the center of the main trunk of a Protected Tree.

*Extraterritorial jurisdiction* means that geographical area immediately outside the City limits extending to a distance of one-half (1/2) mile as authorized by statute or as to such further distance as may be established by petition of property owners.

*Flood Plain* means that land that is predicted to flood during a 100-year storm, which has a 1% chance of occurring in any given year.

*Heritage Tree* means a designated Large Tree Species with a trunk being twenty-four (24) inches or greater DBH and a designated Small Tree Species with a trunk being eight (8) inches or greater DBH.

*Legacy Tree(s)* means certain Large Species Heritage Trees, or other Large Species Trees not identified in this chapter, which due to their age, size, or other factors are of particular historic, intrinsic or aesthetic value to the community and have been placed in the Legacy Tree Registry.

*Legacy Tree Nominee* means a tree eligible to be placed in the Legacy Tree Registry due to its conformance with the requirements in this chapter.

*Legacy Tree Registry* means the registry containing a list of the Legacy Trees approved by City Council.

*Multi-trunk tree* means a tree having two (2) or more trunks arising from the root collar or main trunk.

*Planning and Zoning (P&Z)*. The Planning and Zoning Commission appointed by the City.

*Property Owner* means the person or entity that is identified by the Medina County Appraisal District as the owner of a parcel of land, OR, the entity or person that is identified by written contractual documentation to have the authority to represent the Owner.

*Protected Tree* means both designated Small Tree Species and designated Large Tree Species which are categorized in Table 1 as either Significant Trees (Category One), Heritage Trees (Category Two), Legacy Trees (Category Three) or Flood Plain Trees (Category Four).

*Protected Tree Removal Permit* means a written authorization granted by the City Administrator or assigns, under the provisions of this chapter, for the removal or transplanting of a Protected Tree.

*Public Property* means real property owned by any unit of local, county, state, or federal government or other public entities.

*Registry* means the Legacy Tree Registry as described in this chapter.

*Replacement Tree* means a tree that is planted to satisfy the mitigation requirements of this chapter.

*Replacement Tree Plan* means a drawing submitted by the Property Owner in a form and manner specified by the arborist, providing the method of replacement for the proposed Protected Trees to be removed and shall include a plan that identifies the location, size, and species of all new trees proposed as replacement for the Protected Trees being removed and the fees in lieu of replacement trees.

*Subdivision Ordinance* means the regulation of the subdivision of real property within the City's corporate limits and extraterritorial jurisdiction and as codified in Chapter 100 of the Code.

*Stop Work Order* means an order issued by the arborist, upon approval of City Administrator or assigns, to the Property Owner to cease and desist with work being performed on a site.

*Tree Inventory* means a document showing the species, size, and approximate location of Protected Trees, and, if present, the tag number of all Legacy trees on a specific property.

*Tree Protection Plan* means a drawing submitted by the Property Owner in a form or manner specified by this Ordinance providing the method of protecting trees during construction including protection details, standards, notes and construction plans in accordance with generally accepted industry methods.

*Tree Removal* means uprooting, severing the main trunk of the tree, or any act which causes or may reasonably be expected to cause the tree to die including, without limitation, damage inflicted on the root system by machinery, storage of materials or soil compaction; substantially changing the natural grade above the root system or around the trunk; excessive pruning; or paving with concrete, asphalt, or other impervious materials in a manner which may reasonably be expected to kill the tree.

*Tree Removal Chart* means a drawing based on the Tree Survey showing the Protected Trees identified in the Tree Survey, which the applicant intends to remove.

*Tree Survey* means a drawing of the proposed Preliminary Plat or Site Plan showing size, location, species, critical root zone of all existing categories of Protected Trees, any Protected Tree to be removed or transplanted, a table summarizing all categories of Protected Trees and the total number of caliper inches of each, in accordance with generally accepted methods prepared by licensed design professionals.

*Trunk* means the part of the tree between the root collar and the branches supporting the tree crown. In this chapter determination of the Trunk is essential to calculating DBH. In that regard trees shall be considered either Single-trunk or Multi-trunk.

- *Single-trunk Tree* means a tree that has but one main trunk above the DBH Measurement Point.
- *Multi-trunk Tree* means a tree that has a main trunk which has split into multiple trunks below the DBH Measurement Point.

**Sections 99-05 through Section 99-10 reserved.**

## **Article II. Protected Trees**

**Sec. 99-11. Protected Species.** Species of trees protected by this chapter fall into one of two classes: Large Tree Species and Small Tree Species.

(a) Large Tree Species are as follows:

- American Elm (*Ulmus americana*)
- American Sycamore (*Platanus occidentalis*)
- Bald Cypress (*Taxodium distichum*)
- Bur Oak (*Quercus macrocarpa*)

- Cedar Elm (*Ulmus crassifolia*)
- Italian Stone Pine (*Pinus pinea*)
- Live Oak (*Quercus virginiana*)
- Pecan (*Carya illinoensis*)
- Post Oak (*Quercus stellata*)
- Shumard Oak (*Quercus shumardii*)
- Southern Catalpa (*Catalpa bignonioides*)
- Southern Magnolia (*Magnolia grandiflora*)

(b) Small Tree Species are as follows:

- Bluewood Condalia (*Condalia hookeri*)
- Crape Myrtle (*Lagerstroemia indica*)
- Hawthorn (*Crataegus spp.*)
- Mexican Redbud (*Cercis canadensis L. var. mexicana*)
- Possum Haw (*Ilex decidua*)
- Texas Crabapple (*Malus spp*)
- Texas Mountain Laurel (*Sophora secundiflora*)
- Texas Persimmon (*Diospyros texana*)
- Texas Redbud (*Cercis canadensis L. var. texensis*)

**Sec. 99-12. Categories of Protected Trees.** The two classes of Protected Trees (Large and Small Species) fall under one of four categories as follows: Significant Trees (Category One), Heritage Trees (Category Two), Legacy Trees (Category Three) and Flood Plain Trees (Category Four). Protected Trees shall be preserved pursuant to the requirements of Table 1 (entitled “Protected Tree Categories & Preservation Rates”) at the preservation rate shown on the table.

**Sec. 99-13. Preservation Rate.**

(a) Total Inches method. Determine the total caliper inches of Protected Trees and Heritage Trees shown on the Tree Survey by calculating the sum total DBH inches. Calculate forty percent (40%) of the total Significant Trees DBH and sixty percent (60%) of the total Heritage Trees DBH of the total, that is the total inches that is required to be preserved. Application of the Total Inches method is exemplified as follows:

Example 1: Total Significant Trees identified on the tree survey as Large Tree Species DBH inches equals five hundred (500) DBH inches. The preservation rate is calculated by multiplying forty percent (40%) to five hundred (500) which gives a product of two hundred (200) DBH inches. In that case two hundred (200) DBH inches of Large Tree Species (Significant Tree Category) must be preserved.

Example 2: Total Significant Trees identified on the tree survey as Small Tree Species DBH inches equals one thousand (1,000) DBH inches. The preservation rate is calculated by multiplying forty percent (40%) to one thousand

(1,000) which gives a product of four hundred (400) DBH inches. In that case four hundred (400) DBH inches of Small Tree Species (Significant Tree Category) must be preserved.

Example 3: Total Heritage Trees identified on the tree survey as Large Tree Species DBH inches equals one thousand (1,000) DBH inches. The preservation rate is calculated by multiplying 60% to one thousand (1,000) which gives a product of six hundred (600) DBH inches. In that case six hundred (600) DBH inches of Large Tree Species (Heritage Tree Category) must be preserved.

Example 4: Total Heritage Trees identified on the tree survey as Small Tree Species DBH inches equals six hundred (600) DBH inches. The preservation rate is calculated by multiplying sixty percent (60%) to six hundred (600) which gives a product of three hundred sixty (360) DBH inches. In that case three hundred sixty (360) DBH inches of Small Tree Species (Heritage Tree Category) must be preserved.

**Table 1.**  
**PROTECTED TREE CATEGORIES AND PRESERVATION RATES**

<b>Tree Category</b>	<b>DBH Range of Large Tree Species for each Category expressed in inches</b>	<b>DBH Range of Small Tree Species for each Category expressed in inches</b>	<b>Preservation Rate as a percentage of the total protected DBH</b>
<u>Category One</u> <b>SIGNIFICANT Tree</b>	Large Tree Species that are equal to or greater than eight (8) DBH and less than twenty-four (24) DBH.	Small Tree Species that are equal to or greater than five (5) DBH and less than eight (8) DBH.	Forty percent (40%) of the total protected DBH.
<u>Category Two</u> <b>HERITAGE Tree</b>	Large Tree Species that are equal to or greater than twenty-four (24) DBH, but that are not designated as a Legacy Tree.	Small Tree Species that are equal to or greater than eight (8) DBH.	Sixty percent (60%) of the total protected DBH.
<u>Category Three</u> <b>LEGACY Tree</b>	Trees eligible for Legacy Tree Registration are identified in this chapter.	Not Applicable.	One hundred percent (100%) of total Legacy Tree Nominees in accordance with Section 99-14.

<p><u>Category Four</u></p> <p><b>FLOOD PLAIN Tree</b></p>	<p>All Significant and Heritage Category Trees located within the 100-Year Flood Plain and within a 30-foot wide area parallel and adjacent to the 100-Year Flood Plain</p> <p>Trees eligible for Legacy Tree Registration identified in this chapter that are located within the 100-Year Flood Plain and within a 30-foot wide area parallel and adjacent to the 100-Year Flood Plain.</p>	<p>All Significant and Heritage Category Trees located within the 100-Year Flood Plain and within a 30-foot wide area parallel and adjacent to the 100-Year Flood Plain</p>	<p>Eighty percent (80%) of the total protected DBH.</p> <p>One hundred percent (100%) of total Legacy Tree Nominees in accordance with Section 99-14. Legacy Trees.</p>
--	--	---	---

**Sec. 99-14. Legacy Trees.**

(a) Legacy Tree Registry. A Registry shall be maintained in the office of the City Secretary and shall be established by the procedures that follow:

(1) Legacy Tree Inventory.

- (A) The City Administrator may direct staff to prepare an inventory of Large Species Tree meeting one or more criteria for a Legacy Tree referenced in this chapter. The inventory may include trees on public or private property.
- (B) Upon completion of the inventory, the City Administrator shall present the inventory to the City Council at a regular or special called meeting. At the meeting the inventory is to be presented to City Council and a public hearing shall be scheduled to allow members of the community the opportunity to provide testimony and comments on the merits of adoption of the inventory into the Registry. The trees listed in the inventory shall be considered Registry nominees. Owners of property where the trees are located shall receive a written notice using the address listed in the appraisal district records of the public hearing ten (10) days before the date of the public hearing by U.S. mail.
- (C) After presentation of nominees, and conclusion of the Public Hearing, at the same meeting, or a subsequent meeting as may be its desire, City Council may by resolution accept all, some or none of the nominees for listing in the Registry.

- (2) Periodic Inventories. Periodically, and at least every five years, the City Administrator may direct that subsequent inventories be performed. Should such subsequent inventories yield nominees for the Registry such nominees shall be presented to City Council pursuant to the nomination process set out immediately above.
  - (3) Nomination by citizens. Any citizen of the City may nominate a Large Species Heritage Tree for Registration, provided the tree meets one or more criteria referenced in this chapter.
    - (A) A nomination by a citizen must be in writing, and directed to the City Secretary. The nomination letter must include the location of the tree, its species and approximate diameter size of its trunk. The nomination shall be considered submitted once it is received by the City Secretary.
    - (B) Within fifteen (15) business days of the date of the City's receipt of a citizen's nomination the City Administrator shall cause the matter to be investigated. After the conclusion of the investigation the City Administrator finds that the nominee meets the criteria, the City Administrator shall submit the nominee to City Council, at the first available regular or special meeting, pursuant to the same process used to submit an inventory. If the investigation concludes that the tree does not qualify for nomination the City Administrator shall so inform the nominating citizen in writing.
  - (4) Nominees identified on a Tree Survey. Should a Legacy Tree nominee be identified in a Tree Survey as described in Section 99-23, the Arborist shall immediately advise the City Administrator, who shall submit the nominee to City Council, at the first available regular or special meeting, pursuant to the same process used to submit an inventory. During the pendency of the nomination the nominee shall have the same status as a tree registered in the Legacy Tree Registry. The nominee shall retain such status unless the City Council declines to add it to the Registry or twenty-one (21) days passes, since the date the Tree Survey was submitted to the Arborist and City Council has failed to act on the nomination.
- (b) Legacy Tree Registry eligibility. A Large Species Heritage Tree or another large species tree with a DBH that is equal to or greater than twenty-four (24) inches not identified as Large Tree Species in this chapter is eligible to be included in the Legacy Tree Registry.
  - (c) Criteria for inclusion in the Registry. In considering the inclusion of a nominee to the Registry, the City Council may consider any of the following:
    - (1) The nominee's historic significance;
    - (2) The nominee's location;
    - (3) The nominee's age and size (is it representative of one the oldest or largest of its species in the City);
    - (4) The nominee's ecological value;

- (5) The nominee's aesthetic value;
- (6) The nominee's distinctive features, such as its shape, that distinguishes the nominee from other members of its species, association with an event, or its significance as a community icon.
- (d) Registry Tag. Upon the inclusion of a nominee in the Registry, the City Administrator shall have prepared a non-invasive identifier. The identifier shall include the registry number and designation date, the tree's estimated age and trunk diameter, the species, and historical information, if any.
- (e) Notification. Upon the availability of the Registry Tag, the City Secretary shall notify the owner, of the real property on which the registrant is located, in writing. The notification shall advise the property owner that a tree located on his or her property has been included in the Registry and direct that the Registry Tag be placed on the registrant tree. The City Administrator may direct staff to assist in the placement of the Registry Tag if requested by the property owner.
- (f) Removal from the Registry.
  - (1) Upon request of a property owner. An owner of real property may request a tree, located on the property be removed from the Registry. The request must be in writing and be submitted to the City Secretary. The request shall be placed on a future City Council agenda and the owner shall be given at least seventy-two (72) hours' notice of the date and time of the meeting where the request will be considered. After consideration of the owner's request City Council shall take action to remove or retain the tree in the registry. The results of City Council's action shall be delivered to the owner in writing.
  - (2) Upon City initiated action. Council may consider the removal of a tree from the registry initiated by the City Administrator, the City Council or the Mayor. The initiator shall notify the City Secretary of the location and registration number of the tree to be considered for removal of the registry and request shall be placed on a future agenda of City Council. The owner of the real property on which the tree is located on shall be given seventy-two (72) hours' notice of the date and time of the meeting where the action will be considered. At the meeting, City Council shall take action to remove or retain the tree in the registry. The results of City Council's action shall be delivered to the real property owner in writing.
- (g) Removal of Legacy Tree. Notwithstanding any provision of this chapter to the contrary, no person, directly or indirectly, shall cut down, destroy, remove or move, or effectively destroy through damaging a Legacy Tree except as provided in this chapter.

**Section 99-15 through Section 99-20 reserved.**

### **Article III. Procedures**

**Sec. 99-21. Tree Removal Permit for Significant, Heritage and Flood Plain Trees.**

- (a) Tree removal without permit prohibited. No person, directly or indirectly, shall cut down, destroy, remove or move, or effectively destroy through damaging, any Significant, Heritage or Flood Plain Tree without first obtaining a tree removal permit, unless otherwise specified in this chapter. The application for a tree removal permit shall be submitted on a form provided by the City.
- (b) Damaged or Diseased Tree. A damaged or diseased Significant, Heritage or Flood Plain Tree may be removed upon approval by the City Arborist of a written tree report submitted by the owner. The City Arborist may conduct a field verification visit if deemed necessary. The report shall provide evidence that a licensed arborist or landscape professional has inspected the Tree and certified in writing to the City Arborist that the tree is damaged or diseased to the extent it cannot be saved. If the Tree is infected with Oak Wilt or another infectious disease, the report shall specify how the tree is to be disposed of and the owner shall comply with such directive. The removal of a damaged or diseased Tree will not require mitigation.
- (c) Development Permit Consultation. Any person that plans to submit a Development Permit application for a property that contains one or more Significant, Heritage or Flood Plain Trees planned for removal shall schedule a pre-development conference with the City Arborist to coordinate submittals of the tree survey and the tree mitigation plan to receive a tree removal permit prior to any site development or construction, along with a Pre-Development Review Fee, as set out in the fee schedule. Said development permits include:
  - (1) A minor plat, preliminary plat, final plat, or Planned Unit Development (PUD) Plan.
  - (2) A building permit for new construction, additions, parking lot construction or parking lot expansion exceeding two thousand five hundred (2,500) square feet.
- (d) Affidavit in lieu of Tree Removal Permit. If the site, that is the subject of a Development Permit, does not contain any Protected Trees, or the site has Protected Trees, but the work will not cause damage to or the destruction of said trees, an affidavit, prepared by an Approved Surveyor, and along with an Affidavit Review Fee, as set out in the fee schedule, may be submitted to the City in lieu of a Tree Removal Permit Application. The Affidavit must state that the Approved Surveyor personally inspected the site and that based on such inspection the Approved Surveyor swears or affirms that no Protected Trees are located on the site, or the site has Protected Trees, but the work will not cause damage to or the destruction of said trees. The City Administrator shall accept or refuse such affidavit within ten (10) business days of the date of receipt. Should the City Administrator accept the Affidavit the applicant for the Development Permit shall not be required to submit a Tree Removal Permit in conjunction with the submittal of the Development Permit Application. Should the City Administrator refuse the Affidavit the applicant may appeal such decision to the Planning and Zoning Commission provided such appeal is made in writing, is accompanied with payment of the appeal fee,

as set out in the fee schedule, and submitted to the City Secretary in writing within ten (10) business days after the date of the City Administrator's decision.

- (e) The application for a Tree Removal Permit shall include the following:
  - (1) A completed Tree Removal Permit application, on a form provided by the City that includes a Tree Survey and Tree Removal Chart; and
  - (2) A completed Tree Preservation Plan, as required in this chapter;
  - (3) Payment of all fees set out in the fee schedule.
- (f) The City Administrator or City Arborist shall complete review of the Tree Removal Application within fifteen (15) business days after receipt of a completed application.

**Sec. 99-22. Tree Preservation Plan.**

- (a) A Tree Preservation Plan that complies with the requirements of this section must be submitted with a Tree Removal Permit Application.
- (b) The Tree Preservation Plan shall be submitted, on a form provided by the City, and shall include the information that follows:
  - (1) The applicant name, contact information, and date of submission;
  - (2) A Tree Survey, as described in this chapter, which includes a Tree Survey Chart and a Tree Survey Map;
  - (3) Location of all existing or proposed structures; improvements such as streets, alleys and easements;
  - (4) A proposed grading plan if any elevation changes are being designed within fifty (50) feet of a protected tree to be preserved; and
  - (5) A Tree Removal Chart, identifying the Protected Trees shown on the Tree Survey that the applicant seeks to remove under the Tree Removal Permit.

**Sec. 99-23. Tree Survey.** This section shall set out the requirements for the preparation of a survey of all Protected Trees located on the site that is the subject of the Tree Removal Permit Application prior to any development activity taking place on the site.

- (a) Approved Surveyor: Tree survey shall only be performed by qualified personnel meeting the requirements of this chapter.
  - (1) Specifically, persons conducting any tree survey must first register and be approved by the City Administrator.
  - (2) Any person denied registration or approval may appeal such action to City Council, provided such appeal is made in writing and delivered to the City Secretary within ten (10) days after the date the denial is issued.
  - (3) Minimum qualification to be registered or approved by the City Administrator to survey trees in satisfaction of this chapter are as follows:
    - (A) International Society of Arboriculture Certified Arborist; or
    - (B) Texas Association of Nurserymen Member; or
    - (C) A degree in a related field (i.e. forestry, landscape architecture, botany, horticulture) with five years of field experience.

- (b) Content: The Tree Survey shall include location, size (DBH), species, canopy type, ordinal points of canopy spread, and condition of all Protected Tree Species with DBH of five (5) inches or greater if a Small Species Tree, and DBH of eight (8) inches or greater if a Large Species Tree. The Tree Survey information will be compiled in a Tree Survey Chart in tabular format with each Protected Tree identified by a number corresponding to a numbered tree on the Tree Survey Map as shown on Table 2 and Table 3.

**Table 2.**  
**Tree Survey Chart**

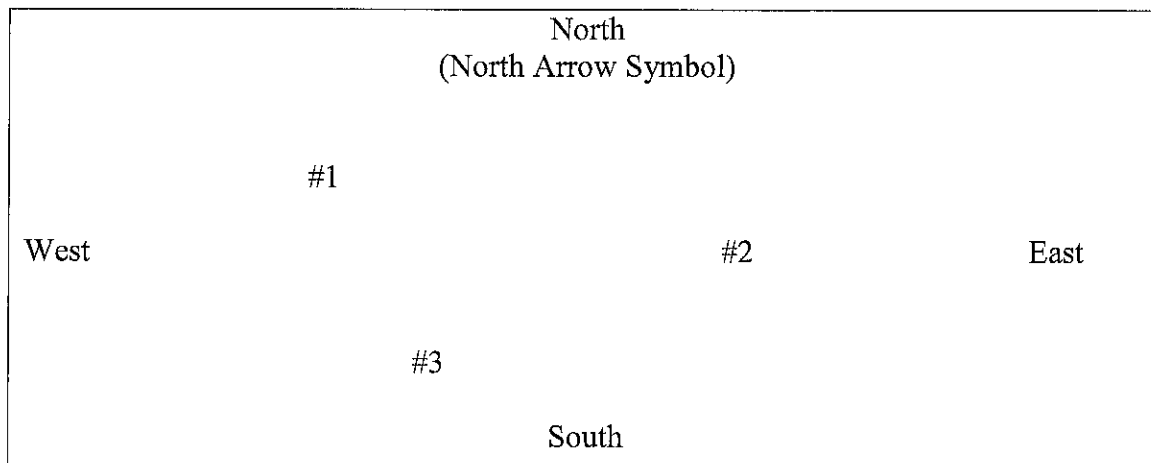
The location number (corresponding with the location shown on the survey map, the DBH, Species, and Category is to be shown on the Tree Survey Chart. An example is illustrated below.

Location (tree number)	Diameter (DBH)	Species	Category
#1	9 inches	Post Oak	Significant
#2	8.5 inches	Post Oak	Significant
#3	30 inches	Live Oak	Heritage

Continue with listing each Protected Tree located on the Property (except for any portion located farther than fifty (50) feet from any planned development or construction activities).

**Table 3.**  
**Tree Survey Map**

The location of the Protected Trees located on the Tree Survey Chart are to be shown on a Tree Survey Map represented as a site plan denoting scale of map, cardinal directions, and numbers corresponding with Protected Trees on the site. For the purposes of this Table it is assumed that three (3) Protected Trees have been located on the property being surveyed. An example is illustrated below.



- (c) The entire parcel being proposed for development shall be included in the tree survey, except for any portion located farther than fifty (50) feet from any planned development or construction activities.
- (d) Upon completion of the Tree Survey it shall be submitted to the City Administrator as a component of the Tree Preservation Plan.

**Section 99-24. Tree Removal Chart.** The Tree Removal Chart shall show the Protected Trees identified in the Tree Survey, which the applicant intends to remove as follows:

- (a) Tree removal
  - (1) Tree removal without mitigation. The Tree Removal Chart shall identify Significant, Heritage or Flood Plain Trees to be removed without mitigation (removal percentage without mitigation cannot exceed sixty percent (60%) for Significant Trees, forty percent (40%) for Heritage Trees, or twenty percent (20%) for Flood Plain trees).
  - (2) Tree removal with mitigation. If the percentage of Protected Trees to be removed, exceeds the percentages authorized under this chapter for removal without mitigation, the Tree Removal Chart shall identify Significant, Heritage or Flood Plain Trees to be removed with mitigation. The applicant shall also be required to follow the mitigation process set out in this chapter (entitled "Protected Tree Mitigation Plan").
  - (3) For Legacy Trees identified for removal, procedures for Legacy Trees in this chapter shall be followed prior to any removal.

**Section 99-25. Tree Survey and Tree Removal Chart Expiration.**

- (a) Tree Survey. A Tree Survey must be conducted within the twenty-four (24) months of the Tree Removal Permit application. If no Tree Survey exists that was conducted within

twenty-four (24) months immediately prior to submission of a Tree Removal Permit application, a new Tree Survey must be made.

(b) Tree Removal Chart.

- (1) No Protected Trees Removed. A Tree Removal Chart that is approved, but under which no Protected Tree has been removed shall remain in effect as long as the Tree Removal Permit Application remains effective, and shall expire with an expired Tree Removal Permit.
- (2) Once any Protected Tree is removed from a site pursuant to a Tree Removal Chart, said Chart shall remain a permanent record of the City regarding the site and shall set out a permanent baseline for removal percentages of unmitigated trees. Any subsequent application for a Tree Removal Permit within twenty-four (24) months prior to the Tree Survey, which seeks removal of Protected Trees without mitigation shall be considered on the percentage of Protected Trees shown as removed, and not mitigated, on the First Tree Removal Chart.

Example: An applicant submits a plat application for a subdivision plat on a site with ten (10) Significant Large Species Trees with a total DBH of one-hundred (100) inches. The applicant must preserve forty percent (40%) of Significant Trees DBH, and may remove sixty percent (60%) of Significant Large Species Trees DBH. The Tree Removal Chart shows the removal of thirty (30) DBH or thirty percent (30%) of the Significant Large Species Trees on the site. In such instance, the applicant for a building permit on the same site would be entitled to remove up to an additional thirty (30) DBH [thirty percent (30%) plus thirty percent (30%) already removed equals sixty percent (60%) trees DBH to be removed] without initiating a new Tree Survey; provided a Tree Removal Chart showing the additional thirty (30) DBH is filed with the building permit application.

**Sec. 99-26. Protected Tree Mitigation Plan.** Significant, Heritage or Flood Plain Trees may be removed in excess of the minimum preservation requirement contained in this chapter provided the excess removal is mitigated in accordance with this chapter. If mitigation is required to compensate for removing trees in excess of the number of diameter inches allowed to be removed within the surveyed area to be calculated for tree preservation under the minimum preservation requirements, the mitigation may be achieved in one of the ways, or combination, that follow:

- (a) Establishment and maintenance of new trees on site: The adverse effects of the removal of Significant, Heritage and Flood Plain Trees may be mitigated by the planting of new trees on-site pursuant to the requirements set out below:
  - (1) Replacement Tree Plan. A Replacement Tree Plan shall be submitted to the City Administrator, which includes:
    - A. The location, including identity of the lot or lots the Replacement Trees are to be placed upon, number and species of the Replacement Trees; and

- B. The approximate date for Replacement Tree planting, which must fall within the seasons approved by the City Arborist for Replacement Tree Planting. Planting must occur within two years of issuance of the Tree Removal Permit unless otherwise specified on the Tree Removal Permit.
- (2) Payment of Replacement Tree Review Fee shall be made as provided in the Fee Schedule.
- (3) Mitigation Ratios: Significant Tree ratio must be at least 1:1 and Heritage Tree ratio must be at least 3:1. In calculating mitigation ratios the trunk diameter of the Significant or Heritage Tree to be mitigated is measured by the DBH method and the Replacement Tree Trunk diameter is measured six (6) inches above ground.
- (4) Restrictions:
  - A. No more than twenty-five percent of the Replacement Trees may be of the same species for the purposes of mitigation; and
  - B. Replacement trees must have a trunk of at least two inches in diameter.
- (5) Inspection:
  - A. Upon completion of the planting of the Replacement Trees the applicant shall so inform the City Arborist who will inspect the site to verify that the Replacement Trees were planted in accordance with the approved Replacement Tree Plan.
  - B. Before the end of the second year after the date of the inspection referenced in the sub-section immediately above, the City Arborist shall re-inspect the site.
  - C. Any Replacement Tree found dead at such re-inspection shall be required to be replaced by the then Property Owner who shall also be required to pay a re-inspection fee, in accordance with the Fee Schedule. Unless otherwise approved by the Arborist, the tree replacing the dead tree shall be of the same species, with a trunk of the same diameter as the tree, which died. After the tree replacing the dead tree has been planted the property owner shall so inform the City Administrator who in turn shall cause for a new inspection to verify that the planting of the tree was accomplished in accordance with the requirements of this sub-section.
- (6) Certificate of Occupancy. No certificate of occupancy shall be issued for any structure located on a lot on which a Replacement Tree is designated to be placed until the Replacement Tree has been planted.
- (7) Fiscal Responsibility. Development in the Extraterritorial Jurisdiction shall be required to post fiscal security in the form of a performance bond, letter of credit or cash, in an amount equal to the amount required to mitigate the removal of Protected Trees by payment to the mitigation fund. Should performance of the planting of the Replacement Trees not occur within the time period specified in the Tree Removal Permit, the City shall draw on the fiscal security to have the trees planted as shown on the Tree Replacement Plan, or, in the event that the

City is prohibited from entering such private property, the City shall cause the Replacement Trees to be planted on public property.

(b) Credit for Preserving Existing Trees.

- (1) Trees of a species listed as a Protected Tree, but which do not meet the minimum DBH to qualify as a Protected Tree, and which have a DBH of three (3) or more inches (Large Species) or two (2) or more inches (Small Species) may be credited toward the mitigation of Protected Trees an applicant seeks to remove.
- (2) The amount of mitigation credit for the preservation of existing trees cannot exceed fifty percent (50%) of the DBH removal to be mitigated.
- (3) Existing Trees proposed for mitigation credit shall be identified on the Replacement Tree Plan.
- (4) The Critical Root Area of Existing Trees proposed for mitigation credit shall be protected in the same manner as a Protected Tree.
- (5) The City Arborist shall review of any Existing Trees proposed for mitigation credit and shall approve mitigation credits, up to fifty percent (50%) of the required mitigation provided the Existing Tree appears healthy without disease and not in decline.

(c) Payment to the Tree Mitigation Fund. In lieu of meeting the minimum preservation standards, a payment to the tree mitigation fund may be made as provided in the Fee Schedule.

**Sec. 99-27. Tree Removal Permit Issuance.**

- (a) Upon the City Administrator's approval of the Protected Tree Removal Permit Application, and the accompanying Protected Tree Preservation Plan, and if applicable, the Protected Tree Mitigation Plan the City Administrator shall cause the issuance of a Protected Tree Removal Permit.
- (b) The Protected Tree Removal Permit shall only authorize the removal of Protected Trees identified on the approved Tree Removal Chart, and only in compliance with the requirements of this chapter.
- (c) The Tree Removal Permit shall be valid for two years and shall expire after such period if not renewed by the applicant.

**Sec. 99-28. Protection during construction.** Trees, which have been identified on the Tree Preservation Plan to be preserved, must be protected during construction activities as follows:

- (a) No materials intended for the use in construction or waste materials accumulated due to excavations or demolition shall be placed within the limits of the critical root zone.
- (b) No equipment shall be cleaned or other foreign materials deposited or allowed to flow overland within the critical root zone of a protected tree including but not limited to paint, oil, solvents, asphalt, concrete, mortar or similar materials.

- (c) No signs, wires or other objects, other than those of a protective nature shall be attached to any tree. However, lighting of a decorative nature may be attached to any tree if said lighting is attached in a manner as not to damage the tree.
- (d) No vehicular and or construction machinery traffic or parking shall take place within the limits of the critical root zone of any tree other than on an existing paved surface, except when accessing the critical root zone for clearing underbrush, establishing the building pad and associated lot grading, vehicular traffic necessary for routine utility maintenance or emergency restoration of utility service or routine mowing operations.
- (e) Grade changes shall be allowed within the limits of the critical root zone of any protected tree only upon approval by the City Arborist.
- (f) Asphalt, concrete or other impervious paving materials is prohibited within the critical root zone of a protected tree. Paving may encroach up to seven feet from the trunk upon approval and certain stipulations by the City Arborist.
- (g) If a protected tree is within fifty (50) feet of a construction area, a protective chain link fence, minimum of four feet in height, shall be erected and maintained on the perimeter of the critical root zone of each protected tree or tree grouping; however, the fence shall follow the property line on the subject site where the critical root zone extends onto the adjacent property. The protective fencing shall be installed prior to any construction activities, and approved by the City Arborist, prior to any construction activities.

**Sec. 99-29. Prohibited activities during construction.**

Activities which are prohibited on any development or construction site within the Critical Root Zone of any Protected Tree designated for Preservation on a Tree Preservation Plan, are as follows:

- (a) No construction vehicle or equipment traffic or parking shall take place.
- (b) No materials intended for use in development or construction, or waste materials accumulated due to excavation or demolition, shall be placed or stored.
- (c) No equipment shall be cleaned or liquids deposited or allowed to flow overland. This includes, but is not limited to, paint, oil, solvents, asphalt, concrete, mortar, and similar materials.
- (d) Grade changes in excess of four inches shall not be made unless properly protected by a retaining wall or tree well as approved by the City Arborist.
- (e) No water, which accumulates due to construction-related activities, shall be permitted to remain around any protected tree.
- (f) No signs, wires, or other attachments, other than those of a protective nature, shall be attached to any protected tree.
- (g) Under no circumstances shall there be a clear cutting of trees on a property for any purpose at any time.
- (h) No person, directly or indirectly, shall prune, cut down, destroy, remove or move, or effectively destroy through damaging, any tree on city-owned property unless otherwise permitted by this chapter.

- (i) No person, directly or indirectly, shall act in concert with an owner, occupant, lessor, lessee or any person claiming an interest in property to enter into any agreement, contract, negotiation, letter of intent or any other type of arrangement to circumvent the prohibitions contained herein or to otherwise qualify for an exemption from the provisions of this chapter.

**Section 99-30 reserved.**

#### **Article IV. Legacy Tree Removal.**

##### **Sec. 99-31. Legacy Tree Removal Process.**

- (a) City Council Approval Required. As Legacy Trees are designated as such by City Council after considering the tree's age, historic or culture significance, Legacy Trees may not be removed without the approval of City Council.
- (b) Permitting Process. An applicant seeking the removal of a Legacy Tree shall submit an application for Legacy Tree removal, with the required fee as set out in the Fee Schedule, to the City Administrator.
  - (1) The Legacy Tree Removal Application shall include the registry number, designation date, the tree's estimated age and trunk diameter as shown on the Legacy Tree Identifier.
  - (2) The Legacy Tree Removal Application shall include a statement as to the basis for the applicant's request to remove the Legacy Tree from the Property.
  - (3) The City Administrator shall have the application placed on the first available agenda, as a public hearing matter, so that the applicant, and members of the public, may provide testimony to City Council as to the merits of the removal.
  - (4) At the meeting where the public hearing is conducted, or at a subsequent meeting, City Council shall either approve or deny the application. In considering an approval, the City Council should consider if approval is contrary to the public interest and if special conditions existing on the property warrant approval.
  - (5) Should City Council approve the applicant's request for removal, a permit shall be issued upon the applicant's payment to the tree mitigation fund as provided in the Fee Schedule.
  - (6) A permit issued under this section shall be valid for six months after issuance and should such permit expire the applicant shall be required to seek a new permit before seeking to remove the Legacy Tree.

**Section 99-32 through Section 99-40 reserved.**

## **Article V. Tree Pruning Restrictions**

### **Sec. 99-41. Tree Pruning Restrictions**

- (a) Applicability. Tree Pruning restrictions shall apply to all property. There are no exemptions from the provisions in this section.
- (b) Required Pruning. Owners shall keep trees trimmed to a safe distance from utility easements, traffic control devices, sidewalks, signs, or roadways as necessary to preserve the public safety. There shall be a clear space from the public street surface to twelve (12) feet above the street surface on a local street or fourteen (14) feet above the street surface on a collector, arterial or highway on the city's thoroughfare plan. There shall be a clear space from a sidewalk surface to nine (9) feet above the sidewalk surface. Should the owner not keep the tree trimmed, the city has a right to prune overhanging trees to ensure public safety.
- (c) Tree Topping or Lopping. It shall be unlawful for any person or entity to severely cut back limbs to stubs larger than three (3) inches in diameter within a Protected or Replacement Tree's crown to such a degree to remove the normal canopy and disfigures the tree without the City Arborist's approval.
- (d) Branch/Root Pruning and Wounded Trees. All broken branches and exposed roots one half (1/2) inch in diameter or greater of any Protected or Replacement Tree shall be cut cleanly and treated in accordance with ANSI standards or similar professional standards for tree care.
- (e) Oak Wilt. Trimming or cutting of any oak tree species is discouraged from February 1 to May 31. After the trimming or cutting of oak tree species, wounds must be painted with black latex or commercial tree wound paint within thirty (30) minutes from the time of cutting. All trimming tools shall be cleaned with a disinfectant after each use to prevent spreading of the disease. It is recommended that owners planning to remove oak trees infected with Oak Wilt from a property consult a licensed professional that is a Texas Oak Wilt Qualified (TOWQ) or a Texas Oak Wilt Certified, prior to the removal of infected trees.

**Section 99-42 through Section 99-50 reserved.**

## **Article VI. Variances.**

### **Section. 99-51. Variances.**

- (a) Variance requests. An applicant for a Tree Removal Permit may seek a variance to any term of this chapter from City Council.
  - (1) The variance request must be made on a variance request form provided by the City, accompanied by such fee as is required by the fee schedule.
  - (2) The variance request may be made at the time of submission of the Tree

Preservation Permit Application, or within ten (10) business days from the date the City Administrator or Arborist makes a decision regarding the Tree Preservation Permit, which the applicant finds objectionable.

- (3) Upon receipt of a completed variance application, and accompanying fee, the City Administrator shall place the variance request on the first available City Council Agenda.
- (b) City Council action. The City Council may approve or deny the variance request. City Council should not approve the variance request unless it makes written findings as follows:
  - (1) Such variance will not be contrary to public interest;
  - (2) Such variance will be in harmony with the spirit and purposes of this chapter;
  - (3) The plight of the Owner of the property for which the variance is sought is due to unique circumstances existing on the property, and the unique circumstances were not created by the Owner of the property nor are such circumstances merely financial;
  - (4) The variance will not substantially weaken the general purposes of this chapter.
- (c) Special Conditions. In the appropriate case, City Council may approve a variance with conditions. Should City Council predicate its approval on any conditions such conditions shall be labeled as "Special Conditions" and shall be included with its written findings.
- (d) Tree Removal Permit. Any Tree Removal Permit issued with an approved variance shall include reference to the variance and any special conditions placed on the approval of the variance.

**Section 99-52 through Section 99-60 reserved.**

## **Article VII. Penalties**

### **Sec. 99-61. Enforcement.**

- (a) The city or any proper person may institute any appropriate civil action or proceedings to prevent violations or threatened violations of these regulations.
- (b) Violations within the ETJ. Any violation of any provision of these regulations within its extraterritorial jurisdiction:
  - (1) Shall be reported to the City Council for whatever action the Council may deem proper, and the City Administrator with the City Attorney shall, when so directed, institute an action in the district court to enjoin the violation of any provision of these regulations or other ordinances in the extraterritorial jurisdiction; or recover damages from the owner necessary to bring about compliance with a requirement.

- (2) Shall not constitute a misdemeanor under such ordinance within the extraterritorial jurisdiction.

**Sec. 99-62. Violations.**

- (a) Inside City Limits. It shall be a violation of this chapter for any person to intentionally or knowingly remove or destroy, or allow the removal or destruction of a Protected Tree, located on any property to which this chapter applies, or for any person to knowingly or intentionally perform any regulated activity in a manner that does not conform to the requirements of this chapter. Any act or omission contrary to the requirements or directives of this chapter, or any breach of any duty imposed by this chapter shall constitute a violation hereof. In addition to enforcement by the city arborist or building official, this section shall be enforceable by and pursuant to the authority provided in the general provisions of this code, including Section 1-4 thereof.
- (b) Outside City Limits. Whenever a violation of this chapter is believed to have occurred or to be occurring outside the corporate limits of the city but within the city's extraterritorial jurisdiction, criminal penalties shall not be sought, however, enforcement against such violations is hereby authorized pursuant to and under the authority granted by V.T.C.A. Local Government Code § 212.001 et seq.
- (c) Work Commencing Before Issuance of a Tree Removal Permit. Any person who commences any work requiring a tree removal permit before obtaining such permit shall be subject to a fee, of five hundred dollars (\$500.00), for commencing development without a tree removal permit.

**Section 99-63 through Section 99-70 reserved.**